

BILL ANALYSIS

Senate Research Center

H.B. 2240
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Jurisprudence
5/20/2003
Engrossed

DIGEST AND PURPOSE

Currently, the default investment standard in the Texas Trust Code states that a trustee is required to handle a trust in a prudent manner when all the investments of the trust are taken into account. H.B. 2240 requires a trustee's investment and management decisions respecting individual assets to be evaluated in the context of the trust portfolio as a whole. This bill provides that there are no categoric restrictions on types of investments and that there is an affirmative duty to review investments. This bill also authorizes the expansion, restriction, elimination, or other alteration of the prudent investor rule, by the provisions of the trust.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 9, Property Code, by adding Chapter 117, as follows:

CHAPTER 117. UNIFORM PRUDENT INVESTOR ACT

Sec. 117.001. SHORT TITLE. Provides that this chapter may be cited as the "Uniform Prudent Investor Act."

Sec. 117.002. UNIFORMITY OF APPLICATION AND CONSTRUCTION. Requires this chapter to be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among the states enacting it.

Sec. 117.003. PRUDENT INVESTOR RULE. (a) Provides that a trustee who invests and manages trust assets owes a duty to the beneficiaries of the trust to comply with the prudent investor rule set forth in this chapter, except as otherwise provided in Subsection (b).

(b) Authorizes the expansion, restriction, elimination, or other alteration of the prudent investor rule by the provisions of a trust. Provides that a trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust.

Sec. 117.004. STANDARD OF CARE; PORTFOLIO STRATEGY; RISK AND RETURN OBJECTIVES. (a) Requires a trustee to invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. Requires the trustee to exercise reasonable care, skill, and caution in satisfying this standard.

(b) Requires a trustee's investment and management decisions respecting individual assets to be evaluated not in isolation but in the context of the trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

- (c) Requires a trustee to consider certain circumstances in investing and managing trust assets.
- (d) Requires a trustee to make a reasonable effort to verify facts relevant to the investment and management of trust assets.
- (e) Authorizes a trustee to invest in any kind of property or type of investment consistent with the standards of this chapter, except as otherwise provided by and subject to this subtitle.
- (f) Provides that a trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise.

Sec. 117.005. DIVERSIFICATION. Requires a trustee to diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

Sec. 117.006. DUTIES AT INCEPTION OF TRUSTEESHIP. Requires a trustee, within a reasonable time after accepting a trusteeship or receiving trust assets, to review the trust assets and make and implement decisions concerning the retention and disposition of assets, in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of this chapter.

Sec. 117.007. LOYALTY. Requires a trustee to invest and manage the trust assets solely in the interest of the beneficiaries.

Sec. 117.008. IMPARTIALITY. Requires a trustee to act impartially in investing and managing the trust assets when a trust has two or more beneficiaries, taking into account any differing interests of the beneficiaries.

Sec. 117.009. INVESTMENT COSTS. Authorizes a trustee to only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee, in investing and managing trust assets.

Sec. 117.010. REVIEWING COMPLIANCE. Provides that compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight.

Sec. 117.011. DELEGATION OF INVESTMENT AND MANAGEMENT FUNCTIONS. (a) Authorizes a trustee to delegate investment and management functions that a prudent trustee of comparable skills could properly delegate under the circumstances. Requires the trustee to exercise reasonable care, skill, and caution in performing certain acts.

- (b) Provides that in performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- (c) Provides that a trustee who complies with the requirements of Subsection (a) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated, unless certain exceptions apply.

- (d) Provides that by accepting the delegation of a trust function from the trustee of a trust that is subject to the law of this state, an agent submits to the jurisdiction of the courts of this state.

Sec. 117.012. LANGUAGE INVOKING STANDARD OF CHAPTER. Provides terms or comparable language in the provisions of a trust that authorizes any investment or

strategy permitted under this chapter, unless otherwise limited or modified.

SECTION 2. Amends Section 111.004(1), Property Code, to redefine “affiliate.”

SECTION 3. Amends Section 113.006, Property Code, as follows:

Sec. 113.006. GENERAL AUTHORITY TO MANAGE AND INVEST TRUST PROPERTY. Authorizes a trustee, subject to the requirements of Chapter 117, to manage the trust property and invest and reinvest in property of any character on the conditions and for the lengths of time as the trustee considers proper, notwithstanding that the time may extend beyond the term of the trust.

SECTION 4. Amends Sections 113.053(e) and (g), Property Code, as follows:

(e) Provides a change in the section under which duties will be imposed on certain activities of a trustee to Chapter 117, rather than 113.056.

(g) Makes a conforming change.

SECTION 5. Amends Section 113.055(b), Property Code, to provide that a change in the section under which duties will be imposed on certain activities of a trustee to Chapter 117, rather than 113.056.

SECTION 6. Amends the heading to Section 113.056, Property Code, to read as follows:

Sec. 113.056. AUTHORIZATION TO MAKE CERTAIN INVESTMENTS.

SECTION 7. Amends Sections 113.056(a) and (d), Property Code, as follows:

(a) Authorizes the trustee to invest all or part of the trust assets in an investment vehicle authorized for the collective investment of trust funds pursuant to Part 9, Title 12, of the Code of Federal Regulations, unless the terms of the trust instrument provide otherwise, and subject to the investment standards provided by this subtitle and any investment standards provided by the trust instrument.

(d) Provides that this subsection is subject to any investment standards provided by this chapter, Chapter 117, or the trust instrument.

SECTION 8. Amends Section 113.060(c), Property Code, to make a conforming change

SECTION 9. Amends Section 114.001(b), Property Code, to make a conforming change.

SECTION 10. Amends Section 45.107, Education Code, to authorize the board of trustees of the district to invest, but not retain, gifts, devises, and bequests. Makes a conforming change.

SECTION 11. Amends Section 815.307, Government Code, to make a conforming change.

SECTION 12. Amends Section 825.301(a), Government Code, to make a conforming change

SECTION 13. Amends Section 840.303, Government Code, to make a conforming change.

SECTION 14. Amends Section 845.301(a), Government Code, to make a conforming change.

SECTION 15. Amends Section 333(b), Texas Probate Code, to make a conforming change.

SECTION 16. Amends Section 812(b), Texas Probate Code, to make a conforming change.

SECTION 17. Amends Section 856(a), Texas Probate Code, to make conforming and nonsubstantive changes.

SECTION 18. Repealer: Sections 113.003 (Retention of Assets), 113.056(b) and (c) (Standard for Trust Management and Investment), and 113.060 (Authority to Delegate Investment Decisions), Property Code.

SECTION 19. (a) Effective date: January 1, 2004.
Makes application of this Act prospective.

(b) Provides that with respect to a trust existing on January 1, 2004, this Act applies only to an act or omission relating to the trust occurring after December 31, 2004.